

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1257 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MAHAMMADSHARIF JAMALJI CHHIPA

Versus

SYED MUSTUFAMIYA SYED AHMED

Appearance:

MR PV NANAVATI for Petitioner

MR PV HATHI for Respondent No. 1

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/06/98

ORAL JUDGEMENT

Heard Shri P.V.Nanavati, learned Advocate for the revisionist and Shri P.V.Hathi, learned Advocate for the respondent has been heard and the Judgment of the two Courts below have been examined.

2. Brief facts are that the revisionist is alleged to be tenant of one room measuring 10 ft. x 10 ft. and

gallery measuring 3 ft. x 6 ft. He filed a Suit against the landlord in the trial Court and sought injunction against the landlord restraining him from raising any construction over the entire terrace.

3. Injunction Application was resisted by the landlord on the ground that the entire terrace is not in the tenancy of the tenant.

4. The trial Court after considering the material on record rejected the injunction Application. An Appeal was preferred which was partly allowed. Certain concessions were granted to the tenant revisionist. Still feeling aggrieved he has preferred this Revision.

5. It was basically an application for injunction application and for granting an injunction application three things have to be kept in mind, viz. prima facie case in favour of the tenant revisionist, balance of convenience in his favour and question of irreparable loss and injury to him in case injunction is refused.

6. The lower Appellate Court has categorically recorded finding that the tenant revisionist has failed to make out prima facie case in his favour that the entire terrace in his tenancy. In view of this finding the lower Appellate Court was not obliged to consider the remaining two conditions, viz. balance of convenience and question of irreparable loss and injury. Finding that the revisionist failed to establish prima facie case of his tenancy over the entire terrace the injunction application was liable to be rejected. Still the lower Appellate Court has granted certain concession to the tenant revisionist which is reproduced as under :

"The Appeal From Order is partly allowed. The respondent - landlord is restrained from making any construction in the open piece of terrace admeasuring about 2.6 x 7 ft. situated just adjacent to the room in possession of the appellant. The respondent - landlord is further restrained from making any construction in the passage of 4 ft. width which leads to the staircase for going downstairs. The respondent - landlord is further restrained from entering into the room in possession of the appellant - tenant. The rest of the prayer as prayed by the appellant - tenant in Para : 7A of the application is rejected and thereby the order of the learned trial Judge is confirmed to that effect. Cost in the cause of the Suit."

7. It is further pertinent to mention that no Court is to grant redundant injunction. The Appellate Court from the report of the Commissioner found that the landlord respondent has already constructed a room on the terrace. Shri P.V.Hathi has pointed that plaster work and finishing is yet to be completed. If brick structure has been completed there is no purpose in granting injunction to the revisionist against the respondent.

8. More over in view of specific finding of the Lower Appellate Court that only one room measuring 10 x 10 ft. and a galary measuring 3 ft. x 6 ft. is in the tenancy of the revisionist he was not entitled to any injunction in respect of entire open portion of the terrace except galary measuring 3 x 6 ft.

9. For reasons given above I find that the lower Appellate Court has not committed any illegality or jurisdictional error rather by granting concession to the tenant revisionist has done substantial justice to him on the facts and circumstances of the Case. The revision being without merit is liable to be dismissed and is hereby dismissed. Rule discharged.No order as to costs.

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